



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012-0154]

Qualification of Drivers; Application for Exemptions; National Association of the Deaf

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to grant requests from 40 individuals for exemptions from the Agency’s physical qualifications standard concerning hearing for interstate drivers. The regulation and the associated advisory criteria published in the Code of Federal Regulations as the “Instructions for Performing and Recording Physical Examinations” have resulted in numerous drivers being prohibited from operating CMVs in interstate commerce based on the fact that they are unable to meet the hearing requirements. After notice and opportunity for public comment, the Agency concluded that granting exemptions for these CMV drivers will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions. FMCSA grants exemptions that will allow these 40 individuals to operate CMVs in interstate commerce for a 2-year period. The exemptions preempt State laws and regulations and may be renewed.

DATES: The exemptions are effective February 1, 2013. The exemptions expire on February 2, 2015.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue, S.E., Room W64-224, Washington, DC 20590-0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

A. ELECTRONIC ACCESS

You may see all the comments online through the Federal Document Management System (FDMS) at: <http://www.regulations.gov>.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> and/or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the Federal Register (75 FR 82132, December 29, 2010).

B. BACKGROUND

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the safety regulations for a 2-year period if it finds “such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.” The statute also allows the Agency to renew exemptions at the end of the 2-year period. On May 25, 2012, FMCSA published a notice requesting public comment on NAD’s application for an exemption on behalf of 45 drivers. The current provisions of the FMCSRs concerning hearing state that a person is physically qualified to drive a CMV if that person:

First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000

Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

49 CFR 391.41(b)(11). This standard was adopted in 1970, with a revision in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

In support of its application for exemptions, the National Association of the Deaf (NAD), cited and relied on a study requested by the Agency's Medical Review Board and presented to the Agency in 2008. The Evidence Report was prepared for the purpose of providing information regarding the current state of knowledge on hearing and CMV driver safety.¹ The NAD maintains that communication in trucking is no longer hampered by hearing loss because drivers increasingly rely on smartphones and other technology to communicate with dispatch. The NAD conducted over 100 hours of interviews with individuals who are deaf and hard of hearing and reports that deaf drivers face fewer distractions behind the wheel.

FMCSA grants 40 individuals an exemption from the regulatory requirement in § 391.41(b)(11) allowing individuals who do not meet the hearing requirements to operate CMVs in interstate commerce for a 2-year period. The Agency's decision on these exemption applications is based on the current medical literature and information and the "Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety," (the 2008 Evidence Report) presented to FMCSA on August 26, 2008. The evidence report reached two

¹ Price, N., Tiller, M., Reston, J., & Tregear, S., "Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety," presented to FMCSA on August 26, 2008. Retrieved April 27, 2012, from: <http://www.fmcsa.dot.gov/rules-regulations/TOPICS/mep/report/Hearing-Evidence-Report-Final-Executive-Summary-prot.pdf>. See the docket for this notice. The full text of the Evidence Report is available through a link at http://ntl.bts.gov/lib/30000/30400/30459/Hearing_DOT-FMCSA_-_FINAL_8-29-08.pdf. The evidence report also reviewed vestibular disorders, which are not included in these exemption applications.

conclusions regarding the matter of hearing loss and CMV driver safety: (1) No studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed the applicant's driving record found in the CDLIS,² for CDL holders, and interstate and intrastate inspections recorded in MCMIS.³ The Agency acknowledges there could be potential consequences of a driver being hearing impaired and/or deaf while operating a CMV under some scenarios. However, the Agency believes the drivers covered by the exemptions do not pose a risk to public safety.

C. EXEMPTIONS

Following individualized assessments of the exemption applications, including a review of detailed follow-up information requested from each applicant, FMCSA grants exemptions from 49 CFR 391.41(b)(11) to 40 individuals. Under current FMCSA regulations, all of the 40 drivers receiving exemptions from 49 CFR 391.41(b)(11) would have been considered physically qualified to drive a CMV in interstate commerce except that they do not meet the hearing requirement.

In addition to evaluating the medical status of each applicant, FMCSA evaluated the crash and violation data for the 40 drivers, some of whom currently drive a CMV in intrastate commerce. The CDLIS and MCMIS were searched for crash and violation data on the 40 applicants. Each applicant's record demonstrated a safe driving history.

² Commercial Driver License Information System (CDLIS) is an information system that allows the exchange of commercial driver licensing information among all the States. CDLIS includes the databases of 51 licensing jurisdictions and the CDLIS Central Site, all connected by a telecommunications network.

³ Motor Carrier Management Information System (MCMIS) is an information system that captures data from field offices through SAFETYNET, CAPRI, and other sources. It is a source for FMCSA inspection, crash, compliance review, safety audit, and registration data.

FMCSA published a notice announcing the exemption applications and requested public comment for each of the applicants. A short summary of the applicants' qualifications follows. A discussion of the comments received follows in section D of this notice. For those applicants who were discussed in the previous notice but are not mentioned in this notice, the Agency will complete the evaluation of those applications and announce its decision at a later date.

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On May 25, 2012, FMCSA published a notice of receipt of exemption applications and requested public comment on 40 individuals (71 FR 60606; Docket number FMCSA-2012-0154). The comment period ended on July 30, 2012. Five hundred and seventy commenters responded to the Federal Register notice. A discussion of the comments is presented later in this document. FMCSA has determined that the following applicants should be granted an exemption.

David W. Bateman.

Mr. Bateman holds a class A commercial driver's license (CDL) from the state of Minnesota. He has driven intrastate for the past 14 years, including driving dump trucks and tractor trailer trucks. He would like to drive tractor trailer trucks in interstate commerce, if he is granted an exemption.

William B. Britt, Jr.

Mr. Britt holds a class D driver's license from the state of Tennessee. Class D has a for-hire endorsement that allows a person to drive vehicles such as limousines and taxis. He operates his personal vehicle in his job as a repairman. He would like to obtain a CDL and drive passenger buses, if granted an exemption.

Ernest W. Brown

Mr. Brown holds a class D driver's license from the state of Kentucky. He would like to obtain a CDL and drive CMVs greater than 26,001 pounds in interstate commerce, if granted an exemption.

Cody J. Campbell

Mr. Campbell holds a class D driver's license from Louisiana. He currently is a "light duty driver," driving a tractor. He would like to obtain a CDL and drive heavy equipment such as a dump truck, or rig truck with a trailer, if granted an exemption.

Tyjuan M. Davis

Mr. Davis holds a class D driver's license from the state of Florida. His family is in the trucking business and he would like to obtain a class A CDL and drive tractor trailers in interstate commerce, if granted an exemption.

Randall R. Doane

Mr. Doane holds a class AM CDL from the state of Texas. He has logged over 250,000 miles driving trucks in interstate commerce prior to failing his hearing test recently. He has experience driving double/triple trailers, tankers and hazardous material transport. He is currently permitted to drive a CMV in intrastate commerce. He would like to return to driving CMVs in interstate commerce, if granted an exemption.

Allen W. Estes

Mr. Estes holds a class B CDL from the state of Louisiana. He has driven a bus transporting students to and from school since 1990. He would like to obtain a CDL so that he can transport students to events outside of Louisiana, if granted an exemption.

Leslie A. Fairbanks

Mr. Fairbanks held a class A CDL driver's license from the state of Minnesota from 2001 until 2010, when he failed his hearing test. During that time he drove a variety of tractor trailer trucks in interstate commerce. He would like to obtain a CDL and return to driving tractor trailer trucks, if he is granted an exemption.

Edward T. Geariety

Mr. Geariety held a class A CDL from the state of Minnesota from 1996 until 2011, when he failed his hearing test. During that time he drove large trucks carrying stone from a quarry to customers. He would like to return to driving CMVs in interstate commerce, if granted an exemption.

Donald W. Gordon

Mr. Gordon holds a class CM driver's license from the state of Pennsylvania. He operates a mini-van as an independent contractor picking up and delivering materials. He would like to obtain a CDL and drive CMVs for a national carrier, if granted an exemption.

William Edward Haab

Mr. Haab holds a class D driver's license from the state of Louisiana. He is interested in obtaining a CDL and pursuing a career in commercial trucking, if granted an exemption.

Charles L. Harper

Mr. Harper holds a driver's license from the state of Washington. He has driven rental vehicles and a 12-seat van for a group home. He would like to obtain a CDL and have the opportunity to drive CMVs in interstate commerce, if granted an exemption.

Cornelio Hernandez

Mr. Hernandez holds a driver's license from the state of California. He has enrolled in a driving course for a class B CDL, but was unable to complete it as he did not pass the hearing test. He would like to obtain a class A or B CDL to pursue work driving CMVs in interstate commercial driver, if granted an exemption.

Alvin L. Johnson

Mr. Johnson holds a class CM driver's license from the state of Georgia. He would like to attend driving school to obtain a CDL and drive CMVs in interstate commerce, if granted an exemption.

Jerry D. Jones

Mr. Jones holds a class C CDL from the state of Texas. He has 7 years' experience driving a variety of forklifts for a construction company. He would like to pursue opportunities driving CMVs in interstate commerce, if granted an exemption.

James E. Karr

Mr. Karr holds a class DM driver's license from the state of Kentucky. He would like to obtain a CDL and seek employment opportunities driving CMVs in interstate commerce, if granted an exemption.

Lorin W. King

Mr. King holds a class D driver's license from the state of Oklahoma. The class D license permits one to drive regular automobiles and trucks. He has experience driving single trailer vehicles with airbrakes. He would like to obtain a CDL and seek employment opportunities driving CMVs in interstate commerce, if granted an exemption.

Christopher Kuller

Mr. Kuller holds a class M driver's license from the state of Indiana. In the past, he held a CDL and hazmat license, and drove in interstate commerce for 14 years, until he was unable to pass the DOT hearing test. He would like to obtain a CDL and return to driving CMVs in interstate commerce, if granted an exemption.

Julio Cesar Medrano

Mr. Medrano holds a driver's license from the state of Washington. He is currently a student majoring in diesel technology, graduating in May 2012. Most job descriptions for diesel engine technicians include a requirement that he holds a CDL, due to the need to pick up and drive trucks back to the shop for repair. He would like to obtain a CDL and drive CMVs in interstate commerce, if granted an exemption.

Hal A. Miller

Mr. Miller holds a class C driver's license from the state of Iowa. A class C allows the operation of vehicles under 26,000 pounds. He has experience operating a Ryder rental truck and personal farm tractors. He would like to obtain a CDL and drive CMVs in interstate commerce, if granted an exemption.

Kathy K. Miller

Ms. Miller holds a class C driver's license from the state of Iowa. She has experience driving students to and from local activities. She is limited at work due to her not being able to pass the hearing test and obtain a DOT medical card. She would like to obtain a CDL and drive CMVs in interstate commerce, if granted an exemption. She is interested in career opportunities with package delivery companies.

Brian J. Minch

Mr. Minch holds a driver's license from the state of New Hampshire. He currently drives super duty pick-up trucks for landscape and construction companies. He would like to obtain a CDL and drive CMVs in interstate commerce, if granted an exemption.

Larry J. Moss

Mr. Moss holds a driver's license from the state of California. He currently works for a delivery and hauling service, driving trucks and often pulling a trailer. He would like to attend trucking school, obtain a CDL and drive CMVs in interstate commerce, if granted an exemption.

Leslie R. O'Rorke

Mr. O'Rourke holds a class D driver's license from the state of Illinois. He has experience driving super duty pick-up trucks with a trailer and dump trucks for a tree service company. He would like to obtain a CDL and drive CMVs in interstate commerce, if granted an exemption.

Timothy A. Parker

Mr. Parker holds a class C driver's license from the state of California. The class C license in California allows one to operate a traditional two-axle vehicle. He has experience operating 18-wheel trucks as well as forklifts. He would like to obtain a CDL so he can drive the tractor trailer trucks in interstate commerce, if granted an exemption.

Gregory M. Potter

Mr. Potter holds a class C driver's license from the state of Texas. He has experience driving a company van and rental trucks towing a trailer. He would like to obtain a class A CDL to drive tanker trucks in interstate commerce, if granted an exemption.

Gerson P. Rameriez

Mr. Rameriez holds a class D driver's license from the state of Montana. He has experience driving a dump truck towing a trailer. He also drove a truck for five years while working as a painter. He would like to obtain a class A CDL and attend a trucking school in Montana, if granted an exemption.

Jeremy Reams

Mr. Reams holds a class D driver's license from the state of Kentucky. The class D is valid for any single motor vehicle, and a trailer with weights not greater than 26,000 pounds. He has experience driving 24-foot moving trucks, fifth wheel vehicles and has hauled ATV's for personal use. He would like to obtain a CDL to drive CMVs in interstate commerce, if granted an exemption.

Robert R. Rotondi

Mr. Rotondi holds a driver's license from the state of South Carolina. He has experience driving rental trucks and forklifts. He currently owns a 12-foot trailer he uses to tow his motorcycle. He would like to obtain a class A or B CDL and drive CMVs in interstate commerce, if granted an exemption.

Daniel Schoultz

Mr. Schoultz holds a class C driver's license from the state of Pennsylvania. He has 25 years' experience driving trucks, but he is currently not able to pass the DOT hearing test. He would like to obtain a CDL again and drive CMVs in interstate commerce, if granted an exemption.

Stanley W. Shields

Mr. Shields holds a class D driver's license from the state of Kentucky. He would like to obtain a CDL and to seek employment opportunities as a CMV driver, if granted an exemption.

James M. Skinner

Mr. Skinner holds a driver's license from the state of Florida that allows him to drive any non-commercial vehicle less than 26,001 pounds. He has experience driving rental trucks and towing rental trailers. He would like to obtain a class A CDL and drive an interstate tractor trailer weighing over 26,001 pounds with airbrakes, if granted an exemption.

Ronald J. Taylor

Mr. Taylor holds a class C driver's license from the state of Texas. He is currently a student, but would like to seek opportunities in driving. He would like to obtain a CDL to drive CMVs in interstate commerce, if granted an exemption.

Justin J. Trethewey

Mr. Trethewey holds a class C chauffeur license from the state of Michigan. He is starting his own transit business after working as a chauffeur. He would like to obtain a CDL and tow a gooseneck trailer to transport cars, recreational vehicles or small trailers, if granted an exemption.

Gilbert J. Valdez

Mr. Valdez holds a driver's license from the state of Rhode Island. He currently works part-time and would like to obtain a CDL to seek employment opportunities driving CMVs in interstate commerce, if granted an exemption.

Mark L. Valimont

Mr. Valimont holds a class C driver's license from the state of Texas. He is currently a package handler. He has 13 years' experience driving dump trucks and three years' experience driving a tractor. He would like to obtain a CDL and drive CMVs in interstate commerce, if granted an exemption.

Kevin C. Willis

Mr. Willis holds a class C driver's license from the state of California. He has held a FAA Private Pilot Certificate since 2006 and flies private planes that weigh up to 12,500 pounds. He would like to obtain a CDL and pursue employment opportunities in the commercial transportation business, if granted an exemption.

James R. Wilson

Mr. Wilson holds a class C driver's license from the state of Georgia. He has experience driving forklifts and a super duty pickup truck for a private employer. He would like to obtain a CDL and drive CMV's in interstate commerce, if granted an exemption.

Holly Cameron Wright, Jr.

Mr. Wright holds a class C driver's license from the state of North Carolina. He has experience driving forklifts and commercial vehicles at his family-owned business site. He would like to obtain a CDL and drive CMVs in interstate commerce, if granted an exemption.

D. COMMENTS

In response to the notice, FMCSA received 570 comments.

Granting the Exemptions on a Trial Basis

The American Trucking Associations (ATA) acknowledged the growing need in the industry for drivers and the difficulty in finding qualified drivers. Given this information, “ATA believes that it is in the best interest of the FMCSA, the trucking industry, society and highway safety to grant the requested exemptions, with the following stipulations:

- a) Granting exemptions to these 40 drivers would be viewed as a temporary, single instance measure, until the proposed study was completed;
- b) In granting the exemptions, FMCSA should compel the applicants to participate in a study about safety performance, and
- c) If the study indicates that the drivers perform safely, that FMCSA should initiate rulemaking to change the current standard.

FMCSA Response: FMCSA notes that the ATA is interested in having more qualified drivers who would otherwise not be qualified due to their hearing impairment. However, FMCSA does not plan to implement the ATA proposal. FMCSA does not believe it would be beneficial to future applicants to restrict exemptions to a two-year, non-renewable process as part of a proposed new program. The FMCSA’s 2008 Evidence Report found no increase in crash risk among hearing impaired drivers, and the Agency believes that additional studies could simply delay drivers receiving a CDL and prove costly to the government without providing meaningful additional safety to the driving public.

No *Ad hoc* Exemptions

The Advocates for Highway and Auto Safety (Advocates) stated that they “suggest it is time for FMCSA to engage the process to revise the standards rather than short-circuit those procedures in order to grant ad hoc exemptions.” They further state their concern that the only scientific evidence presented was in connection with the FMCSA Hearing Evidence Report.

They state that the 2008 Evidence Report is not a research study, but rather a review and evaluation of several prior studies related to hearing and drivers.

FMCSA Response: The Agency does not believe a new scientific study is necessary to make a determination concerning the exemption applications. The 2008 Evidence Report found that previous studies by various researchers did not provide evidence to support the contention that individuals with hearing deficits are at an increased risk for a motor vehicle crash. And there is no basis for concluding that a new study would yield different results. Also, a number of States allow hearing impaired CMV drivers. In fact, several of the drivers discussed in this notice already have experience as CMV drivers. Based on the available literature, and the safe driving experience of these individuals, the Agency believes granting the exemption is appropriate. FMCSA evaluates each driver on a case-by-case basis and also investigates the past driving/violation record to ensure an acceptable level of safety.

While the Agency appreciates Advocates' suggestion that the Agency should revise the standards rather than grant ad hoc exemptions, the rulemaking process is too lengthy to afford relief to the individuals affected here. With no specific data to show that hearing impaired or deaf drivers are a danger to the driving public, granting these exemptions will provide an opportunity to drivers to enter the trucking industry or further pursue driving careers.

FMCSA has received a petition for rulemaking from NAD formally requesting that the Agency eliminate the hearing standard under 49 CFR Part 391. A copy of the petition, submitted in accordance with 49 CFR Part 389 (Rulemaking Procedures – Federal Motor Carrier Safety Regulations) has been placed in the docket referenced at the beginning of this notice. The Agency will consider NAD's petition in accordance with the rules under 49 CFR Part 389

and issue a decision on the matter at a later date. If the Agency grants the petition, it would initiate a rulemaking seeking public comment on proposed changes to the regulations.

Concerns About Exemptions for Bus Drivers with Passengers

The American Bus Association (ABA) submitted comments stating their concerns regarding allowing hearing impaired or deaf drivers to drive buses with passengers. They stated “The ABA’s opposition to the NAD’s application is bottomed on the tasks a CMV motorcoach driver must fulfill while responsible for up to fifty-five passengers in a motorcoach.” They further state:

“While it may be true, as NAD contends, that technology may keep hearing impaired drivers from being ‘hampered’ by the loss of hearing, that rationale cannot apply when a CMV driver is transporting passengers. For CMV motorcoach drivers piloting the vehicle is only a part of the driver’s duties. Drivers with a ‘P’ endorsement may be required to interact with passengers in any number of ways that requires the driver to successfully pass the hearing requirement in 49 CFR 391.”

They oppose the application for exemption to the extent that the exemption would allow any of the 40 applicants to obtain a CDL with a passenger endorsement or in any way qualify them to operate a motorcoach in interstate commerce.

FMCSA Response: The Agency acknowledges ABA’s concerns about the need for motorcoach drivers to communicate with the passengers in the event of an emergency. Motorcoach drivers are responsible for the safety of passengers and that the driver must be able to hear any sign of passenger distress. Therefore, the terms and conditions for the exemptions would not allow the hearing impaired drivers to operate a motorcoach with passengers in interstate commerce.

Not Safe for the Driving Public to Grant these Exemptions

The Agency received an additional nine comments from private citizens and advocacy groups expressing their concern and asking FMCSA not to grant these exemptions. All of the these comments simply expressed that in their opinion they felt it was a safety issue, and they asked FMCSA not to grant any of the 40 exemptions.

FMCSA Response: The Agency acknowledges these comments and their concerns. However, as previously stated there is no specific scientific data to show that hearing impaired drivers are a higher safety risk than other drivers. Also, several States already allow hearing impaired individuals to operate commercial vehicles in intrastate commerce and most, if not all States allow such individuals to operate passenger cars.

Support for Applicants and the Exemptions

The FMCSA received 505 comments from individuals in support of the exemption applications. Most of them stated that the applicants should “be granted unrestricted exemptions from the hearing requirements” and cited evidence from the FMCSA’s 2008 Executive Study of the hearing requirement and that it shows there is not an increase in crash risk for hearing impaired drivers. The letter also states that they strongly feel these deaf drivers should be able to drive any type of vehicle.

Some of the commenters stated that they would like FMCSA to allow all drivers with hearing impairment to be able to obtain a CDL. They state that with modern technology, such drivers can communicate without difficulty.

A number of the comments stated that they believed FMCSA was discriminating against deaf drivers by prohibiting them from working in the trucking industry. Others stated that they thought that hearing impaired drivers were safer drivers and not going to be distracted by

conversations, cell phones and radio noise. Others stated that with modern technology, there was not a hearing requirement in their opinion. Additionally, there were comments that other countries allow hearing impaired drivers to operate CMVs and that some States offer a waiver to hearing impaired drivers for intrastate driving.

The FMCSA also received an additional 43 comments in support of these exemptions from advocacy groups. These included comments from: the Nebraska Commission for the Deaf and Hard of Hearing; Regional Center for Independent Living; First People of GA; and the Commonwealth of Massachusetts, Department of Mental Health. All stated their belief that granting these exemptions is the right thing to do at this time.

In addition, the Agency received a comment of support from the National Association of the Deaf, the organization that submitted the application on behalf of the drivers. NAD stated that it “unequivocally supports the granting of a full exemption to each of the 45 drivers.” They have a concern regarding the validity of the “forced whisper test” to assess hearing and cite FMCSA’s 2008 Evidence Report. They state that the report raised questions about the validity of the same test. They also called for the removal of the hearing requirement altogether from FMCSA’s physical qualification standards.

The U.S. Equal Employment Opportunity Commission (EEOC) believes granting the exemptions would be consistent with the Americans with Disabilities Act (ADA). EEOC “urges FMCSA to give due consideration to the results of the 2008 hearing loss study as it represents current and objective evidence that will help the agency determine whether a driver who cannot meet the hearing standard should be permitted to operate a CMV in interstate commerce.” They further urged the Agency to adopt a flexible and comprehensive approach to be able to obtain a CDL.

Deaf Truckers United stated that drivers who are hearing impaired rely on their other heightened senses such as vision and touch. They state that these drivers are more keenly aware of these senses and that they are able to pick up things that hearing drivers miss. They also ask that the hearing requirement be removed from 49 CFR Part 391.

FMCSA Response: FMCSA acknowledges support for these exemptions. The Agency carefully reviewed all the comments about every individual. As stated above, the rulemaking process is too lengthy to afford relief to the individuals affected here. FMCSA has received a petition for rulemaking from NAD formally requesting that the Agency eliminate the hearing standard under 49 CFR Part 391. The Agency will consider the petition in accordance with the rules under 49 CFR Part 389, and issue a decision on the matter at a later date. If the Agency grants the petition, it would initiate a rulemaking seeking public comment on proposed changes to the regulations.

E. BASIS FOR EXEMPTION

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the hearing standard in 49 CFR 391.41(b)(11) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. With the exemption, applicants can drive in interstate commerce. Thus, the Agency's analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce. The driver must comply with the terms and conditions of the exemption. This includes reporting any crashes or accidents as defined in 49 CFR 390.5 and reporting all citations and convictions for disqualifying offenses under 49 CFR part 383 and 49 CFR part 391.

Conclusion

The Agency is granting exemptions from the hearing standard, 49 CFR 391.41(b)(11), to 40 individuals based on a thorough evaluation of each driver's qualifications, safety experience, and medical condition. Safety analysis of information relating to these 40 applicants meets the burden of showing that granting the exemptions would achieve a level of safety that is equivalent to or greater than the level that would be achieved without the exemption. By granting the exemptions, the CMV industry will gain 40 additional CMV drivers. In accordance with 49 U.S.C. 31315, each exemption will be valid for 2 years from the effective date, with annual recertification required unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

FMCSA exempts the following 40 drivers for a period of 2 years with annual medical certification required: David W. Bateman (MN); William B. Britt (TN); David W. Brown (ME); Ernest W. Brown (KY); Cody J. Campbell (IA); Tyjuan M. Davis (FL); Randall R. Doane (TX); Allan W. Estes (LA); Leslie A. Fairbanks (MN); Edward T. Geariety (NY); Donald W. Gordon (PA); William Edward Haab (LA); Charles L. Harper (WA); Cornelio E. Hernandez (CA); Alvin Leo Johnson (GA); Jerry D. Jones (TX); James Karr (KY); Christopher Kuller (PA); Lorin W. King (OK); Julio Cesar Medrano (WA); Hal A. Miller (IA); Kathy K. Miller (IA); Brian I. Minch (NH); Larry J. Moss (CA); Lesley R. O'Rourke (IL); Timothy A. Parker (CA); Gregory M. Potter (TX); Gerson P. Ramirez (MT); Jeremy Reams (KY); Robert R. Rotondi (SC); Daniel Schoultz (PA); Stanley W. Shields (KY); James M. Skinner (FL); Ronald J. Taylor (TX); Justin J.

Trehtewey (MI); Gilbert Valdez (RI); Mark L. Valimont (TX); Kevin C. Willis (CA); James R. Wilson (GA); Holly Cameron Wright Jr. (NC) from the prohibition of CMV operations by persons with who do not meet the hearing requirement. If the exemption is still in effect at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: January 29, 2013

Anne S. Ferro
Administrator

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